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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA

v.

LUCIO RODRIGUEZ-GONZALEZ

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CIVIL NO. L-05-cv-00066
CRIMINAL NO. 01-cr-00792

ORDER OF DISMISSAL

Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. Nos. 1 and 2]. In addition, Petitioner has filed Motions to Appoint Counsel [Doc. No. 4] and to Proceed In Forma Pauperis [Doc. Nos. 4 and 5].

Petitioner's first claim for relief in his motion pursuant to 28 U.S.C. § 2255 is an appeal based on the opinion rendered by the United States Supreme Court in *United States v. Booker*, 125 S.Ct. 738 (2005). In *Booker*, the Supreme Court expressly stated that its holdings in the case were applicable only to "all cases on direct review." *Id.* at 769. Defendant's conviction became final on December 22, 2001 – more than three years prior to *Booker*; he seeks this relief through collateral review. However, *Booker* cannot be applied retroactively to defendant's sentence. *See In re Elwood*, __ F.3d __, 2005 WL 976998, at *2-3 (5th Cir. Apr. 28, 2005). Moreover, to the extent petitioner seeks relief unrelated to *Booker*, his motion is untimely and barred by limitations. Petitioner filed this §2255 motion in March of 2005, approximately 27 months after expiration of the one-year statute of limitations. *See* 28 U.S.C. § 2255(3).

For the foregoing reasons, petitioner's motion for relief [Doc. Nos. 1 and 2] is hereby **DENIED**. Thus, because of the denial of the motion for relief, petitioner's motions for appointment of counsel [Cv. Doc. No. 3] and for leave to proceed in forma pauperis [Cv. Doc. Nos. 4 and 5] are hereby **RENDERED MOOT**. This case is **DISMISSED**; a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

DONE this 11th day of August, 2005, at Laredo, TX.



Micaela Alvarez
UNITED STATES DISTRICT JUDGE